The Deep Mining & Drainage Co. v. Fitzgerald, 21 Col. 533; *Fitzgerald v. Houkomp,* 44 Ill. App. 365. A workman cannot recover from his employer for an injury caused by the negligence of the foreman or superintendent in the performance of such work as properly pertains to a servant. *Stockmeyer v. Reed,* 55 Ala. 259.

There is a minority doctrine that although the character of the act may be that of a fellow-servant, the master is liable to the servant for an injury caused by the act of the foreman. *Texas & P. Ry. Co. v. Miss.,* 243 S. W. 328; *Russ v. Wabash Western Ry. Co.,* 112 Mo. 45.

TELEGRAPHS—DELAY IN DELIVERING MESSAGE—WHAT LAW GOVERNS.—WESTERN UNION TEL. CO. V. LACER, 93 S. W. 34 (KY.).—*Held,* that the liability of a telegraph company for delay in delivery of a message sent from one state into another, is governed by the law of the state in which the message is sent, though the mistake which caused the delay was made by an agent of the company in the other state.

The fact that the initial and terminal points of a message sent by telegraph are not in the same state is not material in an action against the company to recover damages for a breach of its common law duty to use proper care to effect a prompt and correct transmission and delivery. *Western Union Tel. Co. v. Mellon,* 96 Tenn. 66. There is a proper distinction drawn between an action brought to recover a penalty and an action brought to recover damages, for a mistake made in another state. If the action is brought to recover a penalty, it will fail as the penal laws of a state do not extend beyond its boundaries. *Western Union Tel. Co. v. Pendleton,* 122 U. S. 347. On the other hand a telegraph company which undertakes to correctly transmit a message to another state is liable in the state where the message is sent for damages for breach of its contract in the other state. *Kemp v. Western Union Tel. Co.,* 28 N. C. 661.

WILLS—EVIDENCE OF UNDUE INFLUENCE—DECLARATIONS OF TESTATOR.—WETZ V. SCHNEIDER, 96 S. W. 59 (TEXAS).—*Held,* that declarations, made before or after the execution of the will, by a testator, are not admissible as evidence of undue influence, or of the truth of the facts stated by him, but only as manifestations of his mental condition. James, C. J., *dissenting.*

This decision points out the distinct line of cleavage between those cases which hold that declarations of the testator are admissible as evidence and the cases which hold that such declarations are not admissible, when the question of undue influence is in issue. On the one hand, such declarations are not admissible for the purpose of proving the truth of the statements they contain, whether or not these statements indicate constraint exercised upon the testator. Under such circumstances, being made before or after the execution of the will, these statements would be mere hearsay evidence. *Westfall v. Wait,* 73 N. E. 1089 (Ind.). This objection fails, however, when such statements were contemporaneous with the execution of the will, for in such case they are of course part of the *res gestæ. Jackson v. Kniffen,* 3 Am. Dec. 390 (N. Y.). On the other hand, declarations made within a reasonable time before or after the execution of the will, are admissible, but only for the purpose of showing the condition of the testator's mind and his susceptibility to the alleged undue influence. *Lucas v. Cannon,* 76 Ky. 650; *Robinson v. Hutchinson,* 26 Vt. 38. And there must be other direct evidence of the exercise of undue influence before such declarations can be received. *In re Hess' Will,* 48 Minn. 504.